

SECTION 59 PLANNING REPORT

Planning Proposal Details

Planning Proposal PP_2017_LITHG-001_00 to amend Lithgow Local Environmental Plan 2014.

Lithgow Local Environmental Plan 2014 (Amendment 2)

Planning Proposal Summary

Planning Proposal to amend the Lithgow Local Environmental Plan 2014 through inserting Clause 4.1B Minimum lot sizes for certain split zones.

Date of Gateway Determination

20 January 2017

1.0 SUMMARY

Background

In the making of Lithgow Local Environmental Plan 2014, Council acknowledged different land capabilities and subdivision potential on some single larger allotments by applying more than one zone and minimum lot size across the lot. The land with the higher environmental value and lower capability for urban purposes was given an environmental protection zone, or in some cases a rural zone. A higher minimum lot size was also applied to prevent it from being further fragmented by future subdivision at a scale and intensity that would potentially reduce its environmental/rural value, long-term protection and management.

The application of Clause 4.1, 4.1AA and 4.2C of Lithgow Local Environmental Plan prevents a lot that contains split zones and is below the minimum lots sizes for subdivision in one of the applicable zones from all future subdivision. This is because not all resulting lots, including the residue lot, could achieve the required minimum lot size for that land as shown on the Lot Size Map.

This was a non-intentional consequence of this clause as it prevents lands identified to support future urban growth opportunities from future subdivision and development.

To rectify this issue it is proposed to amend the Lithgow Local Environmental Plan 2014 to include a new clause which will enable the consideration of development applications for the creation of new lots on land with split zones and varying minimum lot sizes subject to certain criteria being applied.

Objectives of the proposal

The objectives of this Planning Proposal are to:

- Enable the subdivision of lots that are within split zones but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C due to minimum lot size

- Provide for subdivision that promotes suitable uses and development of land within split zones.

The Planning Proposal was referred to the Western Region office of NSW Department of Planning and Environment on 2 December 2016. At the request of the Western Region office a minor amendment was made to remove proposed Clause 4.1B (4) (b) to avoid potential issues related to subjective judgement. This amendment was minor in nature and did not substantially change the intent of the proposal.

The original and revised Planning Proposal is provided in Attachment 1.

Public exhibition

The Planning Proposal was placed on public exhibition for a period of 28 days between 13th April 2017 and 11 May 2017.

To support the exhibition the following was undertaken to accord with the requirements of Section 57 of the Environmental Planning and Assessment Act and Council's consultation program as outlined in the Planning Proposal:

- Notification on Council's Website via a dedicated webpage
- Written notification to all landowners affected by split zones of the type referred to in the proposal
- Written notification to all relevant government authorities and agencies
- Notification in the local newspaper in Council's Column throughout the exhibition period
- Exhibition material available for viewing at Council's Administration Centre and all three town libraries during the exhibition period.

Minor amendment following exhibition

Whilst taking enquiry on the Planning Proposal during the exhibition period it has come to light that a minor amendment is required to the proposed clause to ensure that Clause 4.1(4A) retains its effect in preventing any further subdivision in "Area 1" and "Area 2" on the Lot Size Map.

Subsequently Parliamentary Counsel has inserted an additional sub clause as follows "Land identified as "Area 1" or "Area 2" on the Lot Size Map may not be subdivided under this clause.

Such amendment is minor in nature and did not constitute a variation of the Planning Proposal in accordance with the *"Guide to Preparing Local Environmental Plans (S5.5.6)"*.

2.0 GATEWAY DETERMINATION

Council received Gateway Determination on 20 January 2017 that was conditioned to conduct consultation with Rural Fires Service and Water NSW prior to general community consultation. This consultation was completed during February/March 2017. Both

authorities were satisfied with the proposal and raised no objection to it proceeding without alteration. The responses from the agencies were referred to the Western Region office of NSW Planning and Environment.

Council received notification of satisfactory compliance with Conditions 1 and 2 of the Gateway Determination as well as approval to commence community consultation on 27 March 2017.

Timeframe for Completion

The Gateway Determination stated that the LEP was to be finalised within 9 months of the date of the Gateway Determination which falls due on **20 October 2017**.

Gateway Determination and notification to proceed with consultation are provided in Attachment 2.

3.0 COMMUNITY CONSULTATION

Overview of submissions/enquiries received

Council officers fielded a number of verbal enquires via the telephone and face to face interviews during the exhibition period. In all individual circumstances discussed, the Planning Proposal was deemed to have a neutral or positive impact for landowners.

Council received a total of two written submissions during the exhibition period with a further four written enquiries received seeking clarification of the Planning Proposal as detailed in the table below. No submissions raised objection to the proposal.

Name	Submission/Enquiry Summary	Planning Response
Department of Primary Industries Water	DPI water considers the amendment does not impact on water management issues and has no further comment.	Noted.
Department of Primary Industries - Agriculture	There are no issues of concern in relation to the proposal	Noted.
Forager Planning and Development	Concluded that the proposal will not impact on land within the Marrangaroo Urban Release Area and sought confirmation.	Confirmed no impact.
Private	Sought clarification of a number of matters relating to land in the Marrangaroo Employment Zone and the impact of the proposal.	Responses provided and concluded that proposal has a neutral impact.
Private	Sought clarification of the impact of the proposal on future subdivision potential of land in the R5 zone.	As the subject land Lot 180 is a whole lot contained within the R5 zone and the zoning is not split the proposal will have

Name	Submission/Enquiry Summary	Planning Response
		no impact. The remaining Lot 179 is entirely within the RU1 Zone and is already below the MLS of 40ha and therefore has no further subdivision potential. The planning proposal has a neutral effect.
Private	Sought clarification of the impact of the proposal on land at Portland.	Confirmed neutral impact.

4.0 VIEWS OF PUBLIC AUTHORITIES

The Draft Planning Proposal was referred to all relevant public authorities.

Council received comment from Rural Fires Service and Water NSW prior to public exhibition.

Department of Industries - Water and Agriculture responded with no issues of concern.

The responses from these authorities are provided in Attachment 3.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Council has reviewed all applicable State Environmental Planning Policies to determine the direct relevance to this Planning Proposal and has found that the proposal is consistent with all SEPPs and will not hinder their operation during the development assessment phase.

As a condition of gateway determination Council directly consulted with both Rural Fires Service and Water NSW in accordance with Directions 4.4 and 5.2. There are no outstanding matters in relation to the S.117 Directions.

Responses from relevant agencies are provided in Attachment 3.

6.0 PARLIAMENTARY COUNSEL OPINION

Council sought Parliamentary Counsel Opinion on 4 July 2017 and a final draft was received on 1 August 2017.

Council received the legal opinion on 11 August 2017.

Legal Opinion is provided in Attachment 4.

7.0 OTHER RELEVANT MATTERS

Reports to Council in relation to this Proposal were made on 31 October 2016, 26 June 2017 and 25 September 2017. ***Copies of the relevant Council reports and minutes are provided in Attachment 5.***

There are no other matters relevant to this Proposal.

8.0 MAPPING

No mapping is required.

9.0 RECOMMENDATION

Council through its sub- delegate General Manager, Mr Graeme Faulkner, recommends that the Plan be made in accordance with the legal opinion issued on 11 August 2017 and requests that the plan be notified.

ATTACHMENTS

- 1 Original and Revised Planning Proposal
- 2 Gateway Determination
- 3 Responses from Public Authorities
 - Rural Fires Service
 - Water NSW
 - DPI - Water
 - DPI - Ag
- 4 Legal Opinion dated 11 August 2017
- 5 Council reports and minutes of Ordinary Meetings 31 October 2016, 26 June 2017 and 25 September 2017.

Signed



Graeme Faulkner

GENERAL MANAGER LITHGOW CITY COUNCIL

27th September 2017

Reference: SH: LLEPA2



11 January 2016

NSW Department of Planning and Environment
PO Box 58
DUBBO NSW 2830

ATTENTION: Megan Jones

Dear Megan

Planning Proposal – LLEP2014 Amendment 2 – Minimum lot sizes for certain split zones

I refer to the Planning Proposal for the abovementioned matter forwarded to your Department on 2 December 2016. Following discussions with yourself relating to the potential Issues related to the subjectivity of proposed 4.1B (4) (b), Council now wishes to proceed through Gateway with the following revised version of the new clause:

4.1B Minimum lot sizes for certain split zones

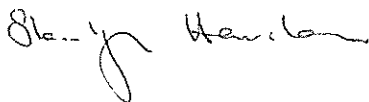
- (1) The objectives of this clause are as follows:
 - (a) to provide for subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1; 4.1AA or 4.2C.
 - (b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.
- (2) This clause applies to each lot(an original lot) that contains:
 - (a) land in a residential, village; business or industrial zone , and
 - (b) land in a rural or environmental zone.
- (3) Despite clause 4.1,4.1AA or 4.2C, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:
 - (a) one of the resulting lots will contain:
 - (i) land in a residential; village; business or industrial zone that has an area not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
 - (ii) all of the land in any rural or environmental zone that was in the original lot; and

- (b) all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.
- (4) Despite subclause (3) development consent may be granted to subdivide an original lot to create a resulting lot/s that contains land within an environmental zone that is less than the minimum lot size shown on the Lot Size Map where:
 - (a) the resulting lot/s are created for a public purpose and dedicated to Council.
- (5) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision:
 - (a) is not likely to have a significant adverse impact on the environmental values of the land, and
 - (b) will not compromise the continued protection and long-term maintenance of any land in an environmental zone, and
 - (c) is not likely to have a significant adverse impact on the primary production value of land in a rural zone.

The justifications and remaining parts of the Planning Proposal forwarded in December remain relevant. Please note there is typographical error at the beginning of the third last paragraph of Page 5, it should read "Sub-clause (4)....

If you require any further information or clarification please do not hesitate to contact me on 02 63549906.

Yours sincerely



Sherilyn Hanrahan
STRATEGIC LAND USE PLANNER

Reference: SH: LLEPA2



2 December 2016

NSW Department Planning and Environment
PO Box 58
DUBBO NSW 2830

ATTENTION: Ashely Albury

Dear Ashley

Planning Proposal – LLEP Amendment 2- Minimum lot sizes for certain split zones

At the Ordinary Meeting of Council held on 31 October 2016 Council resolved to prepare and forward to the NSW Department of Planning and Environment a Planning Proposal to insert a new clause into the Lithgow Local Environmental Plan 2014.

The objectives of the Planning Proposal are to:

- Enable the subdivision of lots that are within split zones but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C due to minimum lot size
- Provide for subdivision that promotes suitable uses and development of land within split zones.

Council requests a Gateway Determination of the Planning Proposal from the Minister for Planning in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979. Please find enclosed a copy of the Planning Proposal and Council resolution.

As this matter is of local significance, we are seeking delegation of the plan-making functions under Section 59 of the EP & A Act, 1979. This delegation will be to the position of General Manager. The appropriate *Evaluation Criteria for the delegation of plan-making functions* is attached to this letter.

If you require further information or clarification please do not hesitate to contact Council's Strategic Land Use Planner, Mrs Sherilyn Hanrahan on 02 63549906.

Yours sincerely

Andrew Muir
ACTING GENERAL MANAGER



PLANNING PROPOSAL

LITHGOW LOCAL ENVIRONMENTAL PLAN 2014
(AMENDMENT 2)

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PART 1 OBJECTIVE OR INTENDED OUTCOMES

The objectives of this Planning Proposal are to:

- Enable the subdivision of lots that are within split zones but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C due to minimum lot size
- Provide for subdivision that promotes suitable uses and development of land within split zones.

PART 2 EXPLANATION OF PROVISIONS

The Planning Proposal will amend Lithgow City Council Local Environmental Plan 2014 (LLEP2014) in the following manner:

- Insert a new clause as follows:

4.1B Minimum lot sizes for certain split zones

(1) The objectives of this clause are as follows:

- (a) to provide for subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1; 4.1AA or 4.2C.
- (b) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.

(2) This clause applies to each lot(an original lot) that contains:

- (a) land in a residential, village; business or industrial zone , and
- (b) land in a rural or environmental zone.

(3) Despite clause 4.1,4.1AA or 4.2C, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:

- (a) one of the resulting lots will contain:
 - (i) land in a residential; village; business or industrial zone that has an area not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
 - (ii) all of the land in any rural or environmental zone that was in the original lot; and
- (b) all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.

(4) Despite subclause (3) development consent may be granted to subdivide an original lot to create a resulting lot/s that contains land within an environmental zone that is less than the minimum lot size shown on the Lot Size Map where;

- (a) the resulting lot/s are created for a public purpose and dedicated to Council ;
or
 - (b) the development will facilitate the ongoing protection and management of the land.
- (5) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision:
- (a) is not likely to have a significant adverse impact on the environmental values of the land, and
 - (b) will not compromise the continued protection and long-term maintenance of any land in an environmental zone, and
 - (c) is not likely to have a significant adverse impact on the primary production value of land in a rural zone.

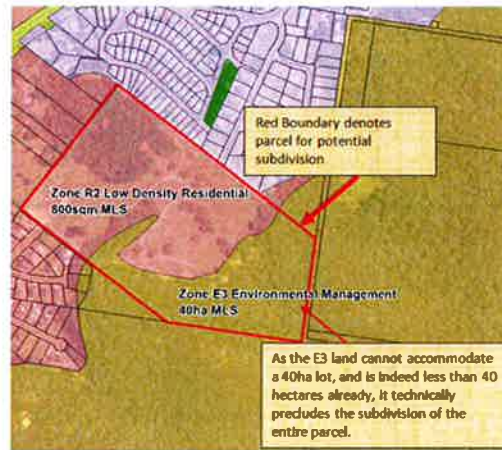
PART 3 JUSTIFICATION

Section A Need for Planning Proposal

In the making of Lithgow Local Environmental Plan 2014, Council acknowledged different land capabilities and subdivision potential on some single larger allotments by applying more than one zone and minimum lot size across the lot. The land with the higher environmental value and lower capability for urban purposes was given an environmental protection zone, or in some cases a rural zone. A higher minimum lot size was also applied to prevent it from being further fragmented by future subdivision at a scale and intensity that would potentially reduce its environmental/rural value, long-term protection and management.

Whilst this is a reasonable planning approach and has been used in similar ways in other LEPs across the State, it does conflict with the literal interpretation and application of Clause 4.1 as required to be adopted by the Standard Instrument LEP.

The application of Clause 4.1, 4.1AA and 4.2C of Lithgow Local Environmental Plan prevents a lot that contains split zones and is below the minimum lots sizes for subdivision in one of the applicable zones from all future subdivision. This is because not all resulting lots, including the residue lot, could achieve the required minimum lot size for that land as shown on the Lot Size Map. Refer to the example below.



This was a non-intentional consequence of this clause as it prevents lands identified to support future urban growth opportunities from future subdivision and development.

To rectify this issue it is proposed to amend the Lithgow Local Environmental Plan 2014 to include a new clause which will enable the consideration of development applications for the creation of new lots on land with split zones and varying minimum lot sizes subject to certain criteria being applied.

The proposed new clause is consistent with clauses or parts of clauses used in other LEPs across the State. Similar sub-clauses to sub-clauses 1-3 of the proposed new clause can be found in many LEPs across the State for example: Bathurst Regional LEP 2014(Clause 4.1C); Mid Western Regional LEP 2012(Clause 4.1F); Bega Valley LEP 2013 (Clause 4.2F); Armidale Dumaresq LEP 2012 (Clause 4.1D). These clauses are so widespread now that they should be considered a standard Model Clause.

Sub-clause (3) is a clause unique to Lithgow to address particular scenarios where for example riparian areas are used as part of the urban drainage system but currently remain in private ownership and where original lots have their boundaries to the centre line of creeks/ivers running through urban areas.

Sub-clauses similar to sub-clause 5 of the proposed new clause is found in the Lake Macquarie LEP 2014 (Clause 4.1D(5)) and Bega Valley LEP 2013 (Clause 4.2F (4)).

Is the planning proposal a result of any strategic study or report?

No. The Lithgow Local Environmental Plan 2014 was gazetted on 19 December 2014 primarily in accordance with the Standard Instrument LEP and the adoption of approved model clauses that were available and appropriate at the time.

Since that time, an unintentional consequence of Clause 4.1 Minimum subdivision lot size has come to light in relation to land that is contained within split zones that cannot be dealt with without an amendment to the LEP.

This issue has been recognised by NSW Planning and Environment through consideration and approval of amendments to a number of other Councils LEPs by inserting similar clauses to correct the anomaly.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The only avenue available to Council to achieve the intended outcomes is to amend the LEP, and that requires a Planning Proposal.

The insertion of the new clause is the easiest way to achieve the intended outcomes. Council could instead amend the LEP zone and or lot size maps, however this would involve a more rigorous process that may still not provide the flexibility required to address all future subdivision scenarios and achieve the required objective.

Section B Relationship to strategic planning framework

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including Sydney Metropolitan Strategy and exhibited draft strategies)?

The Draft Central West and Orana Regional Plan applies to the Lithgow Local Government Area including lands that are the subject of this Planning Proposal.

The Planning Proposal is consistent with this Plan, in particular Action 4.3.1 - “*Deliver enabling planning controls that facilitate an increased range of housing choices, including infill housing close to existing jobs and services*”.

Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?

Yes. The Planning Proposal is to address an issue with the literal implementation of the Standard Instrument LEP clause (4.1 and related clauses) relating to minimum lot sizes in split zones. This new clause is consistent with the implementation of the adopted and endorsed Lithgow Land Use Strategy 2010-2030 and the Lithgow Community Strategic Plan 2026 in facilitating urban growth in identified zoned areas.

Is the planning proposal consistent with applicable State Environmental Planning Policies?

Relevant State Environmental Planning Policies (“SEPPs”)

Council has reviewed all applicable State Environmental Planning Policies to determine the direct relevance to this Planning Proposal and has found that the proposal is consistent with all SEPPs and will not hinder their operation during the development assessment phase.

The only SEPP directly relevant to the Planning Proposal is State Environmental Planning Policy (Rural Lands) 2008. The minimum lot size for certain split zones clause will permit the subdivision of rural land below the minimum lot size as shown on the Lot Size Map, but only where such land is proposed to be subdivided as part of a subdivision for urban purposes from the same original lot. The minimum lot size for certain split zones clause seeks to facilitate urban development in identified zones whilst having a neutral impact on rural lands.

Each subdivision application will be required to consider the impact of the development on rural land and its current and future primary production value to ensure no significant long term impact will result.

The Planning Proposal will not hinder the proper operation of this SEPP.

Is the planning proposal consistent with applicable Ministerial Directions (S.117 directions)?

Relevant Section 117 Ministerial Directions

The Planning Proposal is consistent with the applicable Section 117 Ministerial Directions.

The following 117 (2) Directions are relevant to the Planning Proposal:

Section 117 Direction	Comment
1.1 Business and Industrial Zones	Consistent. The Planning Proposal will facilitate the objectives of this Direction by enabling subdivision of land with split zones.
1.2 Rural Zones	Consistent. The Planning Proposal does not involve the rezoning or increase the density of any rural land.
1.5 Rural Zones	Consistent. The Planning Proposal conforms to the Rural Planning and Rural Subdivision Principles listed in SEPP (Rural Lands) 2008. The new clause will require development consent for any subdivision and includes criteria to consider the impact of development on the primary production value of rural lands.
2.1 Environment Protection Zones	Consistent. The Planning Proposal does not reduce the environmental protection standards that apply to land in an environmental protection zone. The new clause merely provides a mechanism for

Section 117 Direction	Comment
	subdivision of land within split zones to occur but cannot due to the provisions of Clause 4.1. Development consent is required and criteria to ensure that the environmental values of the land are not significantly impacted will apply.
3.1 Residential Zones	Consistent. The Planning Proposal will facilitate the objectives and policy directions of this Direction.
4.2 Mine Subsidence and Unstable Land	Consistent. There is a declared Mine Subsidence District in Lithgow. The Mine Subsidence Board will be consulted in the exhibition period of this Planning Proposal.
4.3 Flood Prone Land	Consistent. The Planning Proposal does not rezone any flood prone land nor impact the planning controls for flood prone land.
4.4 Planning for Bushfire Protection	The NSW Rural Fire Service will be consulted during the exhibition period of this proposal. The new clause will not hinder the operation of the Planning For Bushfire Protection legislation and this hazard/constraint can be further considered in the development assessment phase.
5.2 Sydney Drinking Water Catchment	Water NSW (SCA) will be consulted during the exhibition period of this proposal. As the new clause requires development consent any development within the Sydney Drinking Water Catchment will need to ensure that it has a neutral or beneficial effect upon water quality.
5.10 Implementation of Regional Plans	Consistent. The Planning Proposal is consistent with the Draft Central West and Orana Regional Plan.
6.1 Approval and Referral Requirements	Consistent. The Planning Proposal will not alter or hinder any existing provisions for concurrence, consultation or referral.
6.2 Reserving Land for Public Purposes	Consistent. The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.

Section C Environmental, social and economic impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

There is no declared critical habitat in the Lithgow Local Government Area. Council is satisfied that no adverse impact on any threatened species, populations or ecological community or their habitats will occur as a result of this proposal. The new clause to be inserted requires that any subdivision to be approved under the clause will have due consideration to the environmental values of the land as part of the development assessment process.

Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

It is not expected that this Planning Proposal will result in any other likely environmental effects. It is merely a mechanism to ensure subdivision can still be considered in areas of split zones and any impact will be duly considered as part of the development assessment process.

The provisions of the new clause will facilitate future management of land with environmental value.

Has the planning proposal adequately addressed any social and economic effects?

It is considered that there are no social and economic effects that need to be considered as part of this Planning Proposal.

Section D State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The Planning Proposal does not impact on any existing or future public infrastructure.

What were the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Council has not consulted with any state or commonwealth government agencies in the preparation of the Planning Proposal.

The level of any consultation considered necessary will be determined by NSW Planning and Environment as part of the Gateway Determination.

Council proposes to consult with the following government agencies as part of the public exhibition process:

- NSW Department of Primary Industries (Agriculture and Water)
- Water NSW

- NSW Rural Fire Service
- Fire and Rescue NSW
- Office of Environment and Heritage
- Mine Subsidence Board

PART 4 MAPPING

The Planning Proposal does not involve amendments to the Lithgow Local Environmental Plan 2014 Mapping.

PART 5 COMMUNITY CONSULTATION

The Gateway Determination will confirm community consultation requirements. It is likely that if this Planning Proposal is supported it would be a "low impact" proposal in accordance with Section 5.5.2 of *"A Guide to Preparing LEPs"* that would require exhibition for a period of not less than 14 days. Should public exhibition fall over the holiday period the exhibition period would be extended to take into account public holidays accordingly.

A "low impact" proposal is defined as "a planning proposal that, in the opinion of the person making the Gateway Determination is:

- Consistent with the pattern of surrounding land use zones/and or land uses;
- Consistent with the strategic planning framework;
- Presents no issues with regard to infrastructure servicing;
- Not a principal LEP;
- Does not re-classify public land."

It is proposed that the Planning Proposal will be publicly notified by:

- A notice in the Lithgow Mercury in each week of the exhibition
- Affected landowners
- Notification on Councils website
- Display at Councils customer service centre and libraries

Council will also notify the government agencies concurrently with the public exhibition period unless directed otherwise through the Gateway Determination.

PART 6 PROJECT TIMELINE

Key Stages of Consultation and Approval	Estimated Timeframe
Stage 1 Submission of Planning Proposal to Department Regional Office	December 2016
Stage 2 Gateway Determination	December/January 2017
Stage 3 Public Exhibition and Government Agency Consultation	January 2017
Stage 4 Review/consideration of submissions	February 2017
Stage 5 Council Report	March 2017
Stage 6 Submission to Department to finalise LEP	March 2017
Stage 7 Making and notification of the LEP	April 2017

ATTACHMENTS

Attachment 1

Copy of Report to Ordinary Meeting of Council 31 October 2016 and Minute No 16-289

ENVIRONMENT AND DEVELOPMENT REPORTS

ITEM-4 ENVIRO – 31/10/16 - PROPOSED AMENDMENT TO LITHGOW LOCAL ENVIRONMENTAL PLAN 2014

REPORT BY: J NICHOLS – ACTING GROUP MANAGER ENVIRONMENT &
DEVELOPMENT

SUMMARY

The purpose of this report is to seek a Council resolution to prepare a Planning Proposal under S.55 (1) of the Environmental Planning and Assessment Act to amend Local Environmental Plan 2014 (LLEP2014), and forward the Planning Proposal to the Department of Environment and Planning for a Gateway Determination. The amendment is required to address an anomaly that has arisen in respect to the implementation of Clause 4.1, 4.1AA and 4.2C of the LLEP2014 for lots that have split zones and differing associated minimum lot sizes.

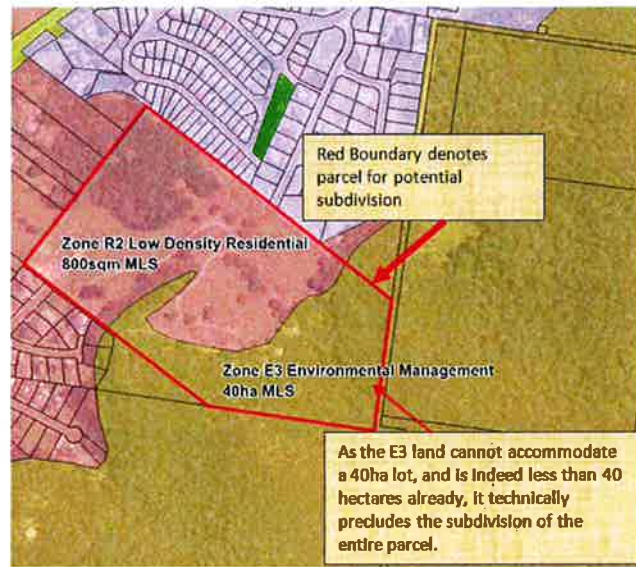
COMMENTARY

In the making of Lithgow Local Environmental Plan 2014, Council acknowledged different land capabilities and subdivision potential on some single larger allotments by applying more than one zone and minimum lot size across the lot. The land with the higher environmental value and lower capability was given an Environmental Protection Zone, or in some cases a rural zone, and a minimum lot size to prevent it from being further fragmented by future subdivision at a scale and intensity that would potentially reduce its environmental value and long-term protection and management.

Whilst this is a reasonable planning approach and has been used in similar ways in other LEPs across the State, it does conflict with the literal interpretation and application of Clause 4.1 as required to be adopted by the Standard Instrument LEP.

Clause 4.1 Minimum subdivision lot size, subclause (3) requires *“The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum shown on the Lot Size Map in relation to this land”*.

The application of this clause prevents a lot that contains split zones and below the minimum lots sizes for subdivision in one of the applicable zones from all future subdivision. This is because not all resulting lots, including the residue lot, could achieve the required minimum lot size for that land as shown on the Lot Size Map. Refer to the example below.



This was a non-intentional consequence of this clause and as such is an anomaly that requires rectification. This will require an additional clause to be inserted into Lithgow Local Environmental Plan 2014. The new clause will provide flexibility to ensure that future subdivision of developable land, particularly land in the urban context identified for future growth is not unduly restricted.

Under the proposed amendment outlined below it would be clarified that the parcel would be able to be subdivided into lots having an area of not less than 800m² in the R2 zone and a residue lot containing at least 800m² of R2 Low Density Residential zoned land and all of the land within the E3 Environmental Management Zone.

PROPOSED AMENDMENT

This anomaly has been recognised by other local government areas across the State since the introduction of the Standard Instrument LEP who have now amended their LEP's to insert an additional clause "*Minimum lot size for certain split zones*" to rectify the anomaly and provide certainty for intended future scale and intensity of development to be achieved.

Similar based clauses can be found in the Bathurst Regional LEP 2014; Bega Valley LEP 2013; Lake Macquarie LEP 2014; Mid Western Regional LEP 2012; Tamworth LEP 2010; and Eurobodalla LEP 2012.

It is proposed to prepare a Planning Proposal to amend the LLEP2014 by inserting a clause to:

- Confirm the objective of the clause to provide for subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C and to ensure that subdivision occurs in a manner that promotes suitable land use and development.
- Confirm that the clause applies to an original lot that is within a residential; village; business or industrial zone and also within a rural or environmental zone.
- Include provisions to enable subdivision of split zone lands as follows:

- one of the resulting lots will contain:
 - land in a residential; village; business or industrial zone that has an area not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
 - all of the land in any rural or environmental zone that was in the original lot, and
- all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.

and/or where a resulting lot is less than the minimum lot size shown on the Lot Size Map in relation to that land where the resulting lot contains land:

- wholly within an environmental protection zone and
 - is to be created for a public purpose (including drainage purposes) and dedicated to Council;
- and
- all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.

and

- before granting consent to development that Council is satisfied that the subdivision:
 - is not likely to have a significant adverse impact on the environmental values of the land, and
 - will not compromise the continued protection and long-term maintenance of any land in an environment protection zone, and
 - is not likely to have a significant adverse impact on the primary production value of land in a rural zone.

The wording of this clause will be further refined in the writing of the full Planning Proposal and will be subject to further legal drafting advice from Parliamentary Counsel should the proposal proceed beyond Gateway Determination.

PROCESS OF AMENDING LOCAL ENVIRONMENTAL PLANS

The plan making process normally involves the following key components:

- The preparation of a Planning Proposal. (A Planning Proposal is a document that explains the intended effect of a proposal local environmental plan (LEP) and sets out the justification for making that plan.)
- The issuing of a Gateway determination. (A Gateway Determination is assessed by the Regional office of the Department of Environment and Planning in the first instance and it specifies whether or not planning proposal is to proceed and if so, in what circumstances. The Gateway is a checkpoint for planning proposals before resources are committed to carrying out

investigative research, preparatory work and consultation with agencies and the community.)

- Community and other consultation on the planning proposal (as required; exhibition periods are either 14 days for low impact proposals or 28 days for all other proposals)
- Finalising the planning proposal
- Drafting of the LEP legal instrument
- Making the plan
- Notifying the LEP on the NSW Government Legislation Website.

A flow chart detailing the LEP plan making process is provided in Attachment 1.

Following a Gateway Determination some plan making powers (S. 59(2)-(4) statutory steps of the process) may be delegated back to Council to finalise should Council request it or where the matters are determined to be of local planning significance as determined by the Gateway. This would increase Councils involvement and decision making in the process and streamline the administrative processing and making of the plan.

POLICY IMPLICATIONS

Nil arising from this report

FINANCIAL IMPLICATIONS

Nil arising from this report

LEGAL IMPLICATIONS

The making of an Environmental Plan is required to be in accordance with Part 3 Division 4 of the Environmental Planning and Assessment Act, 1979.

ATTACHMENTS

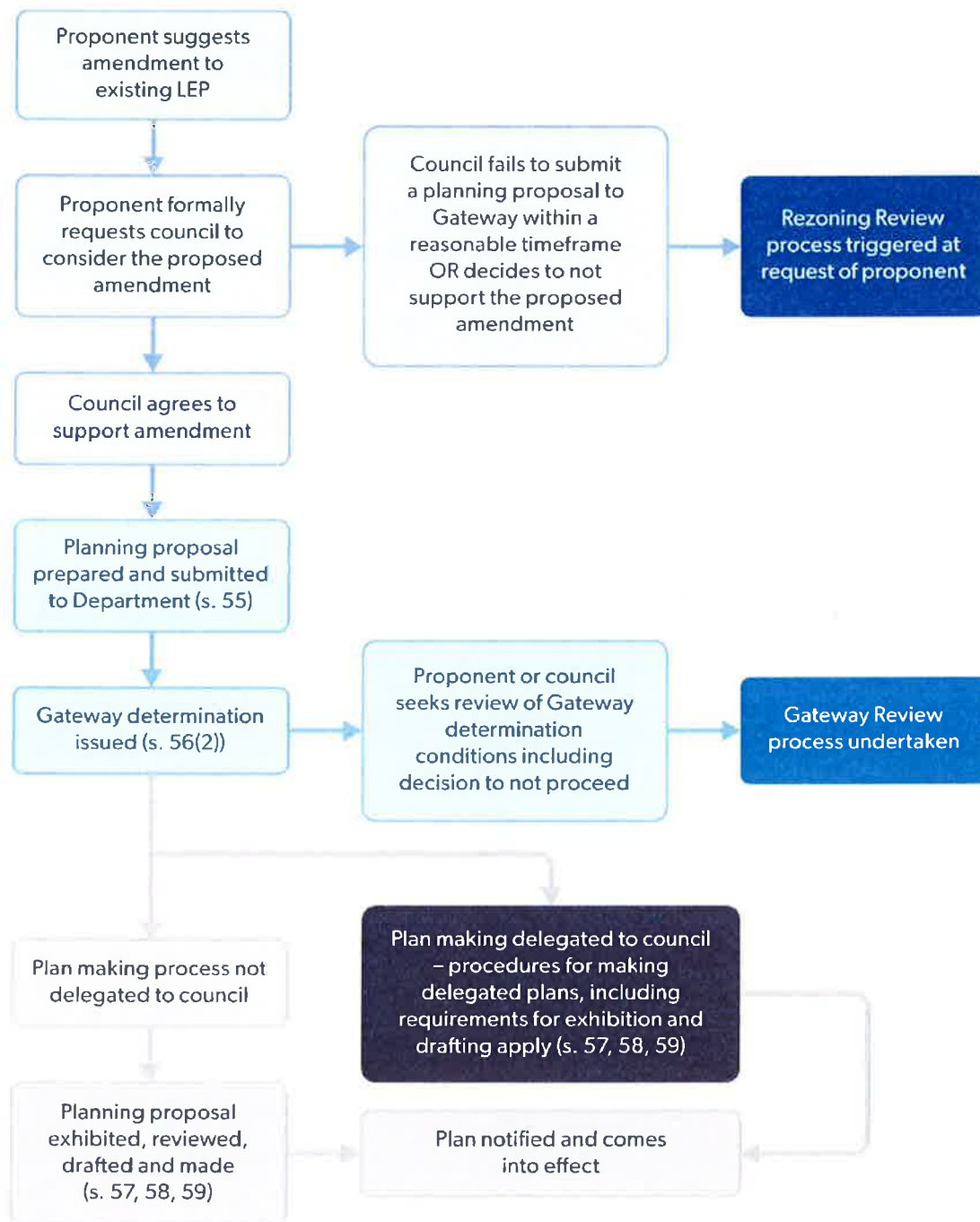
1. Flowchart detailing the LEP plan making process.

RECOMMENDATION

THAT

1. Council prepare a Planning Proposal under S.55(1) of the Environmental Planning and Assessment Act, 1979 to amend Lithgow Local Environmental Plan to insert a new clause (*Minimum subdivision sizes for split zones*) to enable subdivision of land containing more than one zone and minimum lot size currently restricted through operation of Clause 4.1, 4.1AA and 4.2C of the Plan.
2. Council delegate the authority to refer the Planning Proposal, once drafted, to the Department of Environment and Planning for a Gateway Determination under S. 56(1) of the Environmental Planning and Assessment Act, 1979 to the Acting General Manager.

Attachment 1 – LEP plan making process



ENVIRONMENT AND DEVELOPMENT REPORTS

ITEM-4 ENVIRO – 31/10/16 - PROPOSED AMENDMENT TO LITHGOW LOCAL ENVIRONMENTAL PLAN 2014

16 – 289 RESOLVED

THAT

1. Council prepare a Planning Proposal under S.55(1) of the Environmental Planning and Assessment Act, 1979 to amend Lithgow Local Environmental Plan to insert a new clause (*Minimum subdivision sizes for split zones*) to enable subdivision of land containing more than one zone and minimum lot size currently restricted through operation of Clause 4.1, 4.1AA and 4.2C of the Plan.
2. Council delegate the authority to refer the Planning Proposal, once drafted, to the Department of Environment and Planning for a Gateway Determination under S.56(1) of the Environmental Planning and Assessment Act, 1979 to the Acting General Manager.

MOVED: Councillor W McAndrew

SECONDED: Councillor J Smith.

CARRIED

Attachment 4 – Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

LITHGOW CITY LOCAL GOVERNMENT AREA

Name of draft LEP:

LITHGOW LOCAL ENVIRONMENTAL PLAN 2014
(AMENDMENT NO 2)

Address of Land (if applicable):

APPLIES L.G.A. WIDE IN CERTAIN ZONES

Intent of draft LEP:

TO ENABLE SUBDIVISION OF LOTS THAT ARE WITHIN
SPIT ZONES BUT CANNOT BE SUBDIVIDED UNDER
CLAUSE 4.1, 4.1A OR 4.2C DUE TO MINIMUM LOT SIZE.

Additional Supporting Points/Information:

SEE PLANNING PROPOSAL FOR DETAIL

Evaluation criteria for the Issuing of an Authorisation				
(NOTE - where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		N/A		
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant SII/ Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N			
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N			
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N			
Reclassifications	Y/N	N/A		
Is there an associated spot rezoning with the reclassification?	N	N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?				
Is the planning proposal proposed to rectify an anomaly in a classification?	N			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?	N	N/A		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?	N	N/A		

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		N/A	
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		N/A	
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A	
Spot Rezoning	Y/N	N/A	
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		N/A	
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		N/A	
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?			
Does the planning proposal create an exception to a mapped development standard?			
Section 73A matters		N/A	
Does the proposed instrument			
a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;			
b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or			
c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?			
(NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).			
NOTES - Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance. - Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.			

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



The General Manager
City of Lithgow Council
PO Box 19
LITHGOW NSW 2790

Your Ref: LLEPA2
Our Ref: L15/0002
DA17013005817 LR

ATTENTION: Sherilyn Hanrahan

23 February 2017

Dear Sir/Madam

Planning Instrument for Planning Proposal To Amend Lithgow Local Environmental Plan 2014 – Insertion Of Clause – Minimum Lot Sizes For Certain Split Zones.

I refer to your letter dated 25 January 2017 seeking advice for the above Planning Instrument in accordance with the 'Environmental Planning and Assessment Act 1979'.

The Service has reviewed the plans and documents received for the proposal and subsequently raise no concerns or issues in relation to bush fire.

For any queries regarding this correspondence please contact Luc Roberts on 1300 NSW RFS.

Yours sincerely

A handwritten signature in black ink, appearing to read "Nika Fomin".

Nika Fomin
Manager Planning and Environment Services East

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

D2017/13182

Sherilyn Hanrahan
Strategic Land Use Planner
Lithgow City Council
PO Box 19
180 Mort Street, Lithgow NSW 2790

Dear Ms Hanrahan

Planning Proposal to amend Lithgow Local Environmental Plan 2014 – Insertion of clause – Minimum lot sizes for certain split zones

Thank you for your letter dated 25 January 2017 concerning a Planning Proposal, which proposes inserting clause 4.1B *Minimum lot sizes for certain split zones* in the Lithgow Local Environmental Plan 2014.

WaterNSW notes the Planning Proposal provides for the subdivision of land within split zones that promotes suitable uses and development, and applies to original lots that are zoned either:

- a) residential, village, business or industrial, or
- b) rural or environmental.

It is noted part of the Lithgow City Council area lies within the Cocks River catchment, which is part of the Sydney drinking water catchment.

With regards to the specific amendments proposed in the Planning Proposal, WaterNSW notes the proposed amendment would result in the creation of some highly constrained lots, and small lots in certain zones where the permissible land uses are highly likely to be entirely inappropriate, for example in zone E3.

It is recommended that Council undertake a thorough analysis of the potential consequences of the proposed amendment for all land subject to the amendment, to ensure Council is satisfied that future development could occur and a neutral or beneficial effect could be achieved.

Further, WaterNSW provides the following comments.

Section 117(2) Direction 5.2 Sydney Drinking Water Catchment

Section 117(2) Direction 5.2 applies to the section of the Lithgow City Council area within the Sydney drinking water catchment. Under this Direction, Planning Proposals are required to be prepared in accordance with the principle that water quality in the Sydney drinking water catchment must be protected, that the Proposal has a neutral or beneficial effect on water quality, and that future land use be matched to land and water capability.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

For the land within the Sydney drinking water catchment, any future development must comply with the Sydney Drinking Water Catchment (SDWC) SEPP. This means future development must have a neutral or beneficial effect on water quality (NorBE).

The Planning Proposal has omitted listing the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, in Section B *“Is the planning proposal consistent with applicable State Environmental Planning Policies?”*, although it acknowledges the SEPP’s requirements in other parts of the Proposal.

It is noted in addressing the 117(5.2) Direction the Planning Proposal states that it “requires development consent any development within the Sydney Drinking Water Catchment will need to ensure that it has a neutral or beneficial effect upon water quality”.

A more detailed site assessment addressing the requirement for a NorBE during both the construction and operational stages would be required to support any future subdivision(s) and subsequent development proposal(s). This will include, but not be limited to, the potential impacts to water quality from works to subdivide the land, including access and utility services, as well as the construction of any buildings. Clarification regarding the disposal of wastewater and effluent (septic or reticulated systems), also management of stormwater and drainage are required, when assessing the potential impacts on water quality.

Strategic Land and Water Capability Assessment (SLWCA)

WaterNSW's SLWCA constraints mapping provides a broad scale assessment of the potential risk to water quality from development. Reference to other environmental and planning data would be required to identify any other relevant considerations for the area as SLWCA provides information about potential impacts to water quality only.

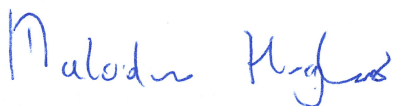
However, the constraints identified in the SLWCA mapping for possible future subdivision must be considered with regards to potential impacts on water quality. The SLWCA mapping shows that the risk to water quality could be substantial. This is particularly relevant to unsewered residential lots smaller than 4000m² where the SLWCA identifies the risk to water quality within the catchment ranging between moderate to extreme. Unsewered lots smaller than 2000m² should not be permitted due to their general inability to fit wastewater treatment and effluent disposal systems in addition to a dwelling on the site.

In relation to the example lot in your letter, the SLWCA mapping shows moderate to extreme risk to water quality for sewer residential lots as well as high to extreme risk to water quality for unsewered lots between 2,000 – 4,000m². Copies of the SLWCA mapping have been included for your information.

Any future subdivision proposal must be supported by a detailed assessment of whether the proposed lot yield, design and configuration would meet relevant planning and environmental considerations, including NorBE, noting that Council is required to use the NorBE Tool for the assessment of subdivisions of less than 4 lots.

Should you have any questions regarding the above, please contact Alison Kniha, Catchment Protection Planning Manager, on 02 4724 2451.

Yours sincerely



MALCOLM HUGHES
Manager Catchment Protection

17/2/17



Contact: Tim Baker
Phone: 02 6841 7403
Mobile: 0428 162 097
Fax: 02 6884 0096
Email: tim.baker@dpi.nsw.gov.au

Sherilyn Hanrahan
Lithgow City Council
PO Box 19
LITHGOW NSW 2790

Our ref: OUT17/16845

1 May 2017

Dear Sherilyn

**Planning Proposal – Lithgow City Local Environmental Plan 2014 (Amendment 2) –
Split Zones Clause**

I refer to your letter dated 11th April 2017 requesting consideration by DPI Water of an amendment to the Lithgow Local Environmental Plan 2014. It is understood the amendment is to insert an additional clause to enable subdivision of lots that are within split zones that is currently not permitted due to the minimum lot size. DPI Water recognises this is to address a non-intentional consequence of the use of split zones for land parcels that were previously recognised for future urban growth by subdivision and development. DPI Water considers the amendment does not impact on water management issues and has no further comment.

Should you have any further queries in relation to this submission please do not hesitate to contact Tim Baker on (02) 6841 7403.

Yours sincerely

Tim Baker
A/Manager, Regional Water Regulation
Department of Primary Industries Water

From: Lithgow City Council
Sent: Tue, 9 May 2017 07:21:25 +1000
To: Technology One Connect
Subject: FW: Planning Proposal - Lithgow City LEP 2014 (Amendment 2) - Split Zones Clause

#ECMBODY

Kylie Turner | Senior Records Officer

Records | [Lithgow City Council](#)

Phone: (02) 6354 9999 | Fax: (02) 6351 4259

From: Mary Kovac [mailto:mary.kovac@dpi.nsw.gov.au]
Sent: Monday, 8 May 2017 3:46 PM
To: Lithgow City Council
Subject: Planning Proposal - Lithgow City LEP 2014 (Amendment 2) - Split Zones Clause

Attention: Sherilyn Hanrahan, Strategic Planning Manager

Dear Sherilyn

Thank you for sending the above Planning Proposal through to NSW DPI (Agriculture). There are no issues of concern in relation to this proposal.

Best wishes

Mary

Mary Kovac | Resource Management Officer
Agricultural Land Use Planning
Department of Primary Industries
34 Hampden St | PO Box 865 | DUBBO NSW 2830
T: +61 268 811 250 | M: +61 (0)427 949 987
E: mary.kovac@dpi.nsw.gov.au
W: www.dpi.nsw.gov.au

[Read the DPI Strategic Plan and watch our video](#)

.dd

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Attachment 5
Council Reports and Minutes of Ordinary
Meetings
31 October 2016
26 June 2017 and 25 September 2017

ENVIRONMENT AND DEVELOPMENT REPORTS

**ITEM-4 ENVIRO – 31/10/16 - PROPOSED AMENDMENT TO LITHGOW
LOCAL ENVIRONMENTAL PLAN 2014**

16 – 289 RESOLVED

THAT

1. Council prepare a Planning Proposal under S.55(1) of the Environmental Planning and Assessment Act, 1979 to amend Lithgow Local Environmental Plan to insert a new clause (*Minimum subdivision sizes for split zones*) to enable subdivision of land containing more than one zone and minimum lot size currently restricted through operation of Clause 4.1, 4.1AA and 4.2C of the Plan.
2. Council delegate the authority to refer the Planning Proposal, once drafted, to the Department of Environment and Planning for a Gateway Determination under S.56(1) of the Environmental Planning and Assessment Act, 1979 to the Acting General Manager.

MOVED: Councillor W McAndrew

SECONDED: Councillor J Smith.

CARRIED

ENVIRONMENT AND DEVELOPMENT REPORTS

ITEM-4 ENVIRO – 31/10/16 - PROPOSED AMENDMENT TO LITHGOW LOCAL ENVIRONMENTAL PLAN 2014

REPORT BY: J NICHOLS – ACTING GROUP MANAGER ENVIRONMENT &
DEVELOPMENT

SUMMARY

The purpose of this report is to seek a Council resolution to prepare a Planning Proposal under S.55 (1) of the Environmental Planning and Assessment Act to amend Local Environmental Plan 2014 (LLEP2014), and forward the Planning Proposal to the Department of Environment and Planning for a Gateway Determination. The amendment is required to address an anomaly that has arisen in respect to the implementation of Clause 4.1, 4.1AA and 4.2C of the LLEP2014 for lots that have split zones and differing associated minimum lot sizes.

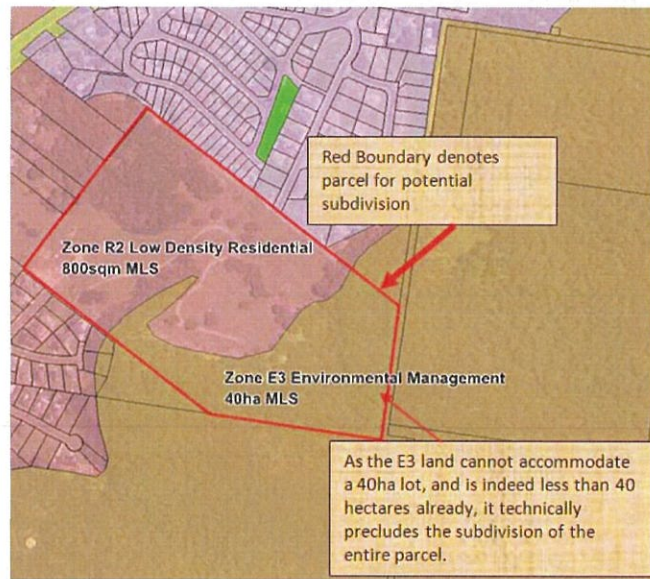
COMMENTARY

In the making of Lithgow Local Environmental Plan 2014, Council acknowledged different land capabilities and subdivision potential on some single larger allotments by applying more than one zone and minimum lot size across the lot. The land with the higher environmental value and lower capability was given an Environmental Protection Zone, or in some cases a rural zone, and a minimum lot size to prevent it from being further fragmented by future subdivision at a scale and intensity that would potentially reduce its environmental value and long-term protection and management.

Whilst this is a reasonable planning approach and has been used in similar ways in other LEPs across the State, it does conflict with the literal interpretation and application of Clause 4.1 as required to be adopted by the Standard Instrument LEP.

Clause 4.1 Minimum subdivision lot size, subclause (3) requires *“The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum shown on the Lot Size Map in relation to this land”*.

The application of this clause prevents a lot that contains split zones and below the minimum lots sizes for subdivision in one of the applicable zones from all future subdivision. This is because not all resulting lots, including the residue lot, could achieve the required minimum lot size for that land as shown on the Lot Size Map. Refer to the example below.



This was a non-intentional consequence of this clause and as such is an anomaly that requires rectification. This will require an additional clause to be inserted into Lithgow Local Environmental Plan 2014. The new clause will provide flexibility to ensure that future subdivision of developable land, particularly land in the urban context identified for future growth is not unduly restricted.

Under the proposed amendment outlined below it would be clarified that the parcel would be able to be subdivided into lots having an area of not less than 800m² in the R2 zone and a residue lot containing at least 800m² of R2 Low Density Residential zoned land and all of the land within the E3 Environmental Management Zone.

PROPOSED AMENDMENT

This anomaly has been recognised by other local government areas across the State since the introduction of the Standard Instrument LEP who have now amended their LEP's to insert an additional clause "*Minimum lot size for certain split zones*" to rectify the anomaly and provide certainty for intended future scale and intensity of development to be achieved.

Similar based clauses can be found in the Bathurst Regional LEP 2014; Bega Valley LEP 2013; Lake Macquarie LEP 2014; Mid Western Regional LEP 2012; Tamworth LEP 2010; and Eurobodalla LEP 2012.

It is proposed to prepare a Planning Proposal to amend the LLEP2014 by inserting a clause to:

- Confirm the objective of the clause to provide for subdivision of lots that are within more than one zone but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C and to ensure that subdivision occurs in a manner that promotes suitable land use and development.
- Confirm that the clause applies to an original lot that is within a residential; village; business or industrial zone and also within a rural or environmental zone.
- Include provisions to enable subdivision of split zone lands as follows:

- one of the resulting lots will contain:
 - land in a residential; village; business or industrial zone that has an area not less than the minimum lot size shown on the Lot Size Map in relation to that land, and
 - all of the land in any rural or environmental zone that was in the original lot, and
- all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.

and/or where a resulting lot is less than the minimum lot size shown on the Lot Size Map in relation to that land where the resulting lot contains land:

- wholly within an environmental protection zone and
 - is to be created for a public purpose (including drainage purposes) and dedicated to Council;
- and
- all other resulting lots will contain land that has an area that is not less than the minimum lot size shown on the Lot Size Map in relation to that land.

and

- before granting consent to development that Council is satisfied that the subdivision:
 - is not likely to have a significant adverse impact on the environmental values of the land, and
 - will not compromise the continued protection and long-term maintenance of any land in an environment protection zone, and
 - is not likely to have a significant adverse impact on the primary production value of land in a rural zone.

The wording of this clause will be further refined in the writing of the full Planning Proposal and will be subject to further legal drafting advice from Parliamentary Counsel should the proposal proceed beyond Gateway Determination.

PROCESS OF AMENDING LOCAL ENVIRONMENTAL PLANS

The plan making process normally involves the following key components:

- The preparation of a Planning Proposal. (A Planning Proposal is a document that explains the intended effect of a proposal local environmental plan (LEP) and sets out the justification for making that plan.)
- The issuing of a Gateway determination. (A Gateway Determination is assessed by the Regional office of the Department of Environment and Planning in the first instance and it specifies whether or not planning proposal is to proceed and if so, in what circumstances. The Gateway is a checkpoint for planning proposals before resources are committed to carrying out

- investigative research, preparatory work and consultation with agencies and the community.)
- Community and other consultation on the planning proposal (as required; exhibition periods are either 14 days for low impact proposals or 28 days for all other proposals)
 - Finalising the planning proposal
 - Drafting of the LEP legal instrument
 - Making the plan
 - Notifying the LEP on the NSW Government Legislation Website.

A flow chart detailing the LEP plan making process is provided in Attachment 1.

Following a Gateway Determination some plan making powers (S. 59(2)-(4) statutory steps of the process) may be delegated back to Council to finalise should Council request it or where the matters are determined to be of local planning significance as determined by the Gateway. This would increase Councils involvement and decision making in the process and streamline the administrative processing and making of the plan.

POLICY IMPLICATIONS

Nil arising from this report

FINANCIAL IMPLICATIONS

Nil arising from this report

LEGAL IMPLICATIONS

The making of an Environmental Plan is required to be in accordance with Part 3 Division 4 of the Environmental Planning and Assessment Act, 1979.

ATTACHMENTS

1. Flowchart detailing the LEP plan making process.

RECOMMENDATION

THAT

1. Council prepare a Planning Proposal under S.55(1) of the Environmental Planning and Assessment Act, 1979 to amend Lithgow Local Environmental Plan to insert a new clause (*Minimum subdivision sizes for split zones*) to enable subdivision of land containing more than one zone and minimum lot size currently restricted through operation of Clause 4.1, 4.1AA and 4.2C of the Plan.
2. Council delegate the authority to refer the Planning Proposal, once drafted, to the Department of Environment and Planning for a Gateway Determination under S. 56(1) of the Environmental Planning and Assessment Act, 1979 to the Acting General Manager.

ITEM-9

**ENVIRO - 26/06/17 - LITHGOW LOCAL ENVIRONMENTAL PLAN 2014
AMENDMENT 2 (LLEP-2014- A2) - MINIMUM LOT SIZES FOR CERTAIN
SPLIT ZONES**

17 – 188 RESOLVED

THAT

1. Council authorises the amendment of the proposed split zones clause to ensure that the intent and integrity of Clause 4.1(4) (A) is retained within the Lithgow Local Environmental Plan 2014.
2. Council forwards the planning proposal to Parliamentary Counsel office for drafting of the instrument.

MOVED: Councillor S Ring

SECONDED: Councillor W McAndrew.

CARRIED

**ITEM-9 ENVIRO - 26/06/17 - LITHGOW LOCAL ENVIRONMENTAL PLAN 2014
AMENDMENT 2 (LLEP-2014- A2) - MINIMUM LOT SIZES FOR CERTAIN
SPLIT ZONES**

REPORT BY: A MUIR – GROUP MANAGER ENVIRONMENT & DEVELOPMENT

REFERENCE

Minute No 16-289: Ordinary Meeting of Council 31 October 2016

SUMMARY

The purpose of this report is to:

- provide an update on the progress of the planning proposal for LLEP-2014-A2;
- advise of the outcomes of the public exhibition period;
- obtain a resolution to proceed with the making of the plan.

COMMENTARY

BACKGROUND

The objectives of the Planning Proposal are to:

- Enable the subdivision of lots that are within certain split zones but cannot be subdivided under Clause 4.1, 4.1AA or 4.2C due to minimum lot size restrictions.
- Provide for subdivision that promotes suitable uses and development of land within split zones.

UPDATE

The Planning Proposal was referred to the Western Region office of NSW Department of Planning and Environment on 2 December 2016. At the request of the Western Region office a minor amendment was made to remove proposed Clause 4.1B (4) (b) to avoid potential issues related to subjective judgement. This amendment was minor in nature and did not substantially change the intent of the proposal.

Council received Gateway Determination on 20 January 2017 that was conditioned to conduct consultation with Rural Fires Service and Water NSW prior to general community consultation. This consultation was completed during February/March 2017. Both authorities were satisfied with the proposal and raised no objection to it proceeding without alteration. The responses from the agencies were referred to the Western Region office of NSW Planning and Environment.

Council received notification of satisfactory compliance with Conditions 1 and 2 of the Gateway Determination as well as approval to commence community consultation on 27 March 2017.

PUBLIC EXHIBITION

The Planning Proposal was placed on public exhibition for a period of 28 days between 13th April 2017 and 11 May 2017.

To support the exhibition the following was undertaken to accord with the requirements of Section 57 of the Environmental Planning and Assessment Act and Council's consultation program as outlined in the Planning Proposal:

- Notification on Council's Website via a dedicated webpage
- Written notification to all landowners affected by split zones of the type referred to in the proposal
- Written notification to all relevant government authorities and agencies
- Notification in the local newspaper in Council's Column throughout the exhibition period
- Exhibition material available for viewing at Council's Administration Centre and all three town libraries during the exhibition period.

OVERVIEW OF SUBMISSIONS/ENQUIRIES RECEIVED

Council officers fielded a number of verbal enquires via the telephone and face to face interviews during the exhibition period. In all individual circumstances discussed, the Planning Proposal was deemed to have a neutral or positive impact for landowners.

Council received a total of two written submissions during the exhibition period with a further four written enquiries received seeking clarification of the Planning Proposal as detailed in the table below. No submissions raised objection to the proposal.

Name	Submission/Enquiry Summary	Planning Response
Department of Primary Industries Water	DPI water considers the amendment does not impact on water management issues and has no further comment.	Noted.
Department of Primary Industries - Agriculture	There are no issues of concern in relation to the proposal	Noted.
Fraser Planning and Development	Concluded that the proposal will not impact on land within the Marrangaroo Urban Release Area and sought confirmation.	Confirmed no impact.
Private Submission	Sought clarification of a number of matters relating to land in the Marrangaroo Employment Zone and the impact of the proposal.	Responses provided and concluded that proposal has a neutral impact.
Private Submission	Sought clarification of the impact of the proposal on future subdivision potential of land in the R5 zone.	As the subject land Lot 180 is a whole lot contained within the R5 zone and the zoning is not split the proposal will have no impact. The remaining Lot 179 is entirely within the RU1 Zone and is already below the MLS of 40ha and therefore has no further subdivision potential. The planning proposal has a neutral effect.
Private Submission	Sought clarification of the impact of the proposal on land at Portland.	Confirmed neutral impact.

MINOR AMENDMENT REQUIRED

Whilst taking enquiry on the Planning Proposal during the exhibition period it has come to light that a minor amendment is required to the proposed clause to ensure that Clause 4.1(4A) retains its effect in preventing any further subdivision in “Area 1” and “Area 2” on the Lot Size Map.

Council officers will explore with Parliamentary Counsel options to ensure that the intent and integrity of Clause 4.1(4) (A) is retained.

This will be a minor amendment (in accordance with the *Guide to Preparing LEPs*) to the Planning Proposal following exhibition. It is an amendment that only changes the provisions for implementation and it is therefore considered that it does not represent a variation that would require the proposal to be reforwarded to the Minister or delegate.

The efficacy of “Area 1” and “Area 2” within the LEP 2014 is currently under review as part of the Rural and Rural Residential Strategy project. As such no change should be made that will impact on this provision in the Lithgow Local Environmental Plan 2014 until such time as this Strategy is finalised.

NEXT STEPS IN THE PROCESS

As Council has been delegated authority to exercise the Ministers functions under Section 59 of the Environmental Planning and Assessment Act the next steps in the process are:

- Council resolves to proceed with the making of the LEP
- Council requests Parliamentary Counsel Office to draft the Plan
- Council considers the drafted instrument and resolves to make the Plan
- Council notifies the Plan and the Department requests official publication on the NSW legislation website.

POLICY IMPLICATIONS

Nil arising from this report

FINANCIAL IMPLICATIONS

Nil arising from this report

LEGAL IMPLICATIONS

The matter is required to be in accordance with the Environmental Planning and Assessment Act and the *Guide to Preparing LEPs* issued by NSW Planning and Environment.

RECOMMENDATION

THAT

1. Council authorises the amendment of the proposed split zones clause to ensure that the intent and integrity of Clause 4.1(4) (A) is retained within the Lithgow Local Environmental Plan 2014.
2. Council forwards the planning proposal to Parliamentary Counsel office for drafting of the instrument.

**ITEM-14 ECDEV - 25/09/17 - ADOPTION LITHGOW LOCAL ENVIRONMENTAL PLAN
2014 (LEP) AMENDMENT 2 - MINIMUM LOT SIZES FOR CERTAIN SPLIT
ZONES**

REPORT BY: DIRECTOR ECONOMIC DEVELOPMENT AND ENVIRONMENT

REFERENCE

Minute No 12-456 Ordinary Meeting of Council 26 November 2012
Minute No 16-289: Ordinary Meeting of Council 31 October 2016
Minute No 17-188: Ordinary Meeting of Council 26 June 2017

SUMMARY

The purpose of this report is to obtain a Council resolution to:

- adopt Lithgow Local Environmental Plan 2014 (Amendment 2) as per the legal opinion dated 11 August 2017;
- authorise the General Manager as a delegate to the Minister of Planning to make the plan in accordance with Section 59(2)(a) of the Environmental Planning and Assessment Act, 1979; and
- refer the Plan to the Western Region Office of the NSW Department of Planning and Environment to arrange for on-line notification of the Plan

COMMENTARY

In accordance with Minute 17-188 of 26 June 2017 Council requested Parliamentary Counsel to draft the legal instrument and provide Council with a legal opinion that the drafted environmental planning instrument could be legally made. This opinion was received by Council on 11 August, 2017 as attached.

The LEP is now in order to be adopted by Council and officially made as outlined in the attached Section 59 Planning Report. Council's General Manager has been issued authorisation to exercise the Minister's functions under Section 59 of the EP & A Act 1979 for this LEP amendment.

The Plan once signed by the General Manager will then be referred to the Western Region Office of NSW Planning and Environment requesting notification of the Plan on the NSW legislation web site. The Plan will take effect on the date it is so notified.

Council was issued with a timeframe of 9 months from the date of the Gateway Determination to finalise the LEP amendment. This should be achieved with the relevant deadline being 20 October 2017.

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

- Budget approved – N/A
- Cost centre – N/A
- Expended to date – N/A
- Future potential impact – N/A

LEGAL IMPLICATIONS

This matter is required to proceed in accordance with Environmental Planning and Assessment Act and the *Guide to Preparing LEPs* issued by NSW Planning and Environment.

Council accepted the Minister's delegated plan making powers under Section 59(2)-(4) of the EP & A Act, 1979 and sub-delegated these functions to the General Manager in accordance with Section 381 of the Local Government Act 1993 (Minute No 12-456 – 26/11/12). Written authorisation to exercise delegation in relation to this LEP was granted on 20 January 2017.

ATTACHMENTS

1. Section 59 Planning Report
2. Opinion of the Parliamentary Counsel dated 11 August 2017
3. Lithgow Local Environmental Plan 2014 (Amendment 2)

RECOMMENDATION

THAT

1. Council adopt Lithgow Local Environmental Plan 2014 (Amendment 2)
2. The General Manager exercises the delegated functions of the Minister for Planning to make the Plan in accordance with Section 59(2) (a) of the Environmental Planning and Assessment Act, 1979.
3. Council refer the Plan and Section 59 Planning Report to the Western Region Office of NSW Planning and Environment with a request to arrange for on line notification of the Plan on the NSW legislation web site.

**ITEM-14 ECDEV - 25/09/17 - ADOPTION LITHGOW LOCAL ENVIRONMENTAL
PLAN 2014 (LEP) AMENDMENT 2 - MINIMUM LOT SIZES FOR
CERTAIN SPLIT ZONES**

17 – 270 RESOLVED

THAT

1. Council adopt Lithgow Local Environmental Plan 2014 (Amendment 2)
2. The General Manager exercises the delegated functions of the Minister for Planning to make the Plan in accordance with Section 59(2) (a) of the Environmental Planning and Assessment Act, 1979.
3. Council refer the Plan and Section 59 Planning Report to the Western Region Office of NSW Planning and Environment with a request to arrange for on line notification of the Plan on the NSW legislation web site.

MOVED: Councillor R Thompson

SECONDED: Councillor W McAndrew.

CARRIED

